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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARILYN RONDON, an individual,
Plaintiff,
vs.
BOARDRIDERS, INC., a California
corporation; CR WOOSTER STREET
CORPORATION, d/b/a CYNTHIA
ROWLEY, a New York corporation;
and DOES 1 through 10, inclusive,
Defendants.

CASE NO. 8:22-cv-02071

COMPLAINT FOR:

- 1) COPYRIGHT INFRINGEMENT;
- 2) CONTRIBUTORY COPYRIGHT
INFRINGEMENT;
- 3) VICARIOUS COPYRIGHT
INFRINGEMENT;
- 4) VIOLATION OF CALIFORNIA CIVIL
CODE SECTION 980, *et seq.*; and
- 5) VIOLATION OF CALIFORNIA
BUSINESS
AND PROFESSIONS CODE
SECTION 17200.

1 Plaintiff Marilyn Rondon (“Plaintiff”) complains of defendants Boardriders,
2 Inc. (“Boardriders”) and CR Wooster Street Corporation, d/b/a Cynthia Rowley
3 (“Rowley” and, together with Boardriders and the Doe Defendants defined below, the
4 “Defendants”) and alleges as follows:

5 **NATURE OF THIS ACTION**

6 1. This is a civil action seeking damages for copyright infringement and
7 related claims in connection with Defendants’ infringement of Plaintiff’s copyrights.

8 **PARTIES**

9 2. Plaintiff Marilyn Rondon is, and at all relevant times was, an individual
10 residing in Los Angeles County, California.

11 3. Defendant Boardriders is, and at all relevant times was, a clothing,
12 swimwear and apparel company with its principal place of business located at: 5600
13 Argosy Circle, Building 100, Huntington Beach, California 92649.

14 4. Defendant CR Wooster Street Corporation, d/b/a Cynthia Rowley is, and
15 at all relevant times was, a clothing, swimwear and apparel company with multiple
16 boutique locations in California and a principal place of business located at: 8 Jay
17 Street, New York, New York, 10013.

18 5. The true names and capacities, whether individual, corporate, associate
19 or otherwise, of Doe Defendants 1 through 10 (“Doe Defendants”), inclusive and each
20 of them, are not known to Plaintiff at this time. Such Doe Defendants are legally
21 responsible for the events and happenings described herein and for the damages
22 proximately caused thereby. Plaintiff will seek the leave of the Court to amend this
23 complaint to set forth the true names and capacities of any such Doe Defendants when
24 they have been ascertained.

25 6. On information and belief, at all times mentioned herein, Defendants,
26 inclusive and each of them, including without limitation any Doe Defendants, were
27 acting in concert and participation with each other, were joint participants and
28 collaborators in the acts complained of, and were the agents and/or employees of one

1 another in doing the acts complained of herein, each acting within the course and
2 scope of said agency and/or employment.

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction of this action pursuant to 17 U.S.C. Sections
5 101 *et seq.* and 28 U.S.C. Section 1331, 1332 and 1338, *et seq.* This Court also has
6 supplemental jurisdiction over Plaintiff's claims arising under state law under 28
7 U.S.C. § 1367, as those claims form part of the same case or controversy.

8 8. This Court has personal jurisdiction over Defendant Boardriders, which:
9 (i) does, and solicits, continuous and systematic business in California; (ii) is engaged
10 in a substantial part of the conduct averred herein in California and, by way of such
11 conduct, has injured Plaintiff in California; (iii) derives substantial revenue from
12 goods used, or services rendered, in California; (iv) expects, or reasonably should
13 expect, such infringing conduct to have consequences in California; and (v) derives
14 substantial revenue from interstate commerce.

15 9. This Court has personal jurisdiction over Defendant Rowley, which: (i)
16 does, and solicits, continuous and systematic business in California; (ii) is engaged in
17 a substantial part of the conduct averred herein in California and, by way of such
18 conduct, has injured Plaintiff in California; (iii) derives substantial revenue from
19 goods used, or services rendered, in California; (iv) expects, or reasonably should
20 expect, such infringing conduct to have consequences in California; and (v) derives
21 substantial revenue from interstate commerce.

22 10. Venue is proper in this District pursuant to 28 U.S.C. Section 1331(b)
23 and (c) because: (i) Defendants conduct business in this District—including, but not
24 limited to, in Huntington Beach, California; (ii) Defendant Boardriders maintains its
25 principle place of business in this District; (iii) Defendant Rowley owns and operates
26 numerous stores in this District; (iv) a substantial part of the events giving rise to
27 Plaintiff's claims occurred in this District; and (v) Plaintiff is located, and has been
28 injured, in this District as a result of Defendants' conduct.

FACTUAL ALLEGATIONS

A. **Background on Plaintiff and the Color Studies**

3 11. Plaintiff Marilyn Rondon is a multidisciplinary pop artist, muralist,
4 author and photographer. In her work, Plaintiff explores color studies, focusing on
5 graphic paintings, printmaking, and the topography of flowers and nature.

6 12. For the past eight years, Plaintiff has been responsible for series of
7 paintings, murals and photographs depicting various prints and graphic art
8 emphasizing geometric figures overlaid with foliage and other floral elements
9 (hereinafter referred to as the “Color Studies”).

13. Plaintiff is the owner of United States Federal Copyright Registrations
in connection with the Color Studies, specifically Federal Copyright Nos.:
VA0002310859; VA0002310899; VA0002310902; VA0002310903;
VA0002310904; and VA0002311073.

14 14. Additionally, Plaintiff owns the common law copyrights to the Color
15 Studies.

16 15. Plaintiff has a loyal fan base and maintains an Instagram account with
17 more than 55,000 followers, which has garnered Plaintiff sales of her artwork both
18 domestically and abroad.

16. Plaintiff, a Person of Color and someone who immigrated to the United States, created the Color Studies following an abusive relationship as part of her personal healing process.

22 17. Plaintiff's artistic work—including various paintings and photographs as
23 well as the Color Studies—has been featured by various articles and on multiple
24 websites, including the Los Angeles Times, CR Fashion Book, Obey, Highsnobiety
25 and Dazed, to name a few, and has been exhibit at art shows around the world,
26 including at Art Basel.

18. Plaintiff created the Color Studies in or about 2014, which included
paintings, photographs, and a mural located at the Hotel Astor in Miami, Florida,

1 among other things.

2 19. Plaintiff's artistic work—including the Color Studies—are of obvious
3 high production value and easily discernable as Plaintiff's work.

4 **B. Background on Defendants Boardriders and Rowley**

5 20. Plaintiff is informed and believes, and on that basis alleges, that
6 Boardriders—the parent company of the women's sports brand “ROXY”—designs,
7 manufactures and/or distributes clothing, swimwear, and apparel both on the Internet
8 and in brick-and-mortar stores throughout the United States of America and abroad.
9 In 2021, Boardriders enjoyed revenue in excess of \$1 Billion.

10 21. Plaintiff is informed and believes, and on that basis alleges, that Rowley
11 designs, manufactures and/or distributes clothing, swimwear, and apparel both on the
12 Internet and in brick-and-mortar stores throughout the United States of America and
13 abroad. In 2021, Rowley enjoyed revenues of approximately \$5 Million.

14 **C. The Color Studies and Defendants' Access Thereto**

15 22. On or about July 21, 2014, Plaintiff posted to Instagram a photograph of
16 herself in front of one of works included in the Color Studies collection of artwork.

17 23. In or about December 2014, Plaintiff exhibited the Color Studies at the
18 Art Basel show in Miami, Florida.

19 24. On information and belief, the husband of Rowley's founder, president
20 and namesake—Ms. Cynthia Rowley herself (“Ms. Rowley”)—attended the Art
21 Basel show in Miami, Florida in or about December 2014.

22 25. Ms. Rowley's husband is an influential gallery owner and art dealer who
23 owns and operates the renowned Half Gallery in Manhattan, New York and is a
24 purported fixture of the art scene that can regularly be seen at events across the United
25 States.

26 26. Additional photos depicting the Color Studies would later be posted to
27 Plaintiff's various social media platforms as Plaintiff shared the artwork with the
28 public at large.

1 **D. Defendants' Infringement**

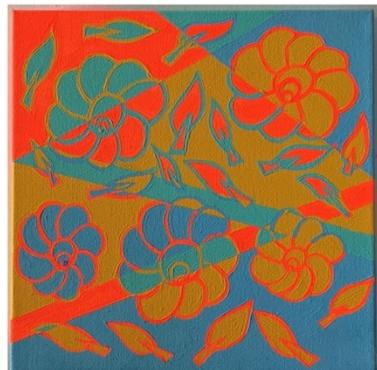
2 27. In or about November 2021, Rowley announced a collaborative capsule
3 with Boardriders to produce, market and sell a collection of surf and snow apparel to
4 be sold by and through ROXY—one of the brands owned and operated by
5 Boardriders.

6 28. This collaborative capsule was comprised of several items that feature
7 and incorporate many patterns, colors and graphics previously created and
8 memorialized by Plaintiff in the Color Studies—such as, the Roxy x Rowley: (i)
9 Puffer Jacket; (ii) Snowboard; (iii) Seamless Pullover Sweater; (iv) 1.5mm Back Zip
10 Long Sleeve Springsuit; (v) One Piece Swimsuit; (vi) Elongated Bikini Top; (vii)
11 Cheeky Hi Leg Bottom; and/or (viii) Rosewood Goggles (the “Infringing Items”).

12 29. By way of example, photographs of certain Infringing Items are set forth
13 below and juxtaposed next to certain excerpts of Plaintiff’s Color Studies:

14 15 PLAINTIFF’S COLOR STUDIES	16 17 DEFENDANTS’ INFRINGING ITEMS
18 19 Plaintiff’s U.S. Federal Copyright 20 Registration (“Plaintiff’s 21 Copyright”) No.: VA0002310902	22 23 24 25 26 27 28 (i) Defendants’ Puffer Jacket  

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2 **Plaintiff's Copyright No.:**
3 **VA0002311073**



16 **Plaintiff's Copyright No.:**
17 **VA0002310859**



1
2 **(ii) Defendants' Snowboard**



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2 **Plaintiff's Copyright No.:**

3 **VA0002310904**



4
5 **(iii) Defendants' Seamless Sweater**



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7 **Plaintiff's Copyright No.:**

8 **VA0002310902**



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2 **Plaintiff's Copyright No.:**

3 **VA0002310902**



13 **Plaintiff's Copyright No.:**

14 **VA0002310859**



21 **Plaintiff's Copyright No.:**

22 **VA0002310903**



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2 **(iv) Defendants' 1.5mm Back Zip Long**

3 **Sleeve Springsuit**



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2 **Plaintiff's Copyright No.:**

3 **VA0002311073**



15 **Plaintiff's Copyright No.:**

16 **VA0002310902**



1
2 **(v) Defendants' One Piece Swimsuit**



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2 **Plaintiff's Copyright No:**
3 **VA0002311073**



(vi) Defendants' Elongated Bikini Top



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16 **Plaintiff's Copyright No.:**
17 **VA0002310902**



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2 **Plaintiff's Copyright No:**

3 **VA0002311073**



16 **Plaintiff's Copyright No.:**

17 **VA0002310902**



1 **(vii) Defendants' Cheeky Hi Leg Bottom**



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2 **Plaintiff's Copyright No.:**

3 **VA0002310899**



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9 **Plaintiff's Copyright No.:**

10 **VA0002310902**



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2 **(viii) Defendants' Rosewood Goggles**



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31. In or about July 2022, Plaintiff became aware of the Infringing Items when several of her Instagram followers reached out to congratulate her what her followers believed to be a partnership between Plaintiff and Defendants.

32. Not only had no such partnership been created between Plaintiff and Defendants, Plaintiff had not authorized—and, to this day, has not authorized—the copying, displaying, use and/or distribution of the Color Studies for purposes of the Infringing Items.

1 32. By applying Plaintiff's designs to the Infringing Items without her
2 consent, Plaintiff was denied the opportunity to consider whether she desired her work
3 and herself to be associated with Defendants and whether Defendants align with her
4 own views and beliefs.¹

5 33. The artistic arrangement of the Color Studies is unique and non-
6 predictable. And yet, as clearly visible in side-by-side photos of the items at issue,
7 the Infringing Items are substantially similar, if not duplicative, to the Color Studies.

8 34. The average person viewing the art and the clothing items would
9 recognize—and, as mentioned above, has in fact recognized—that the artistic
10 expression in one was copied from the other.

11 35. Among other things, the color palette, composition and details right
12 down to the leaves and petals are decisive in showing that Defendants copied
13 Plaintiff's artwork and, in doing so, have committed copyright infringement.

14 36. Indeed, as exemplified above and as will be demonstrated at trial,
15 Defendants had access to Plaintiff's copyrighted Color Studies, and Defendants'
16 Infringing Items are substantially similar to Plaintiff's Color Studies.

17 **E. Plaintiff Was Substantially Harmed by Defendants' Infringement**
18 **and Defendants Have Unfairly Benefited**

19 37. Plaintiff has suffered substantial financial and emotional damages,
20 among other things, as a result of Defendants' infringement and unauthorized use of
21 the Color Studies. The amount of Plaintiff's damages are to be determined at trial,
22

23 ¹ Plaintiff—a survivor, and prior victim, of domestic abuse—would have
24 strongly considered whether to license her artwork to: (i) a company whose past
25 controversies include sexualizing young women; and/or (ii) a brand with a long
26 history of appropriating art without properly crediting its source. But due to
27 Defendants' actions, Plaintiff has now had her designs forcibly associated with
28 Defendants without any regard for Plaintiff's personal views, beliefs or preferences.

1 but exceed \$100,000—the minimum license fee Plaintiff would have charged for the
2 commercial use of the Color Studies in connection with the Infringing Items.

3 38. Upon information and belief, Defendants' misconduct has proximately
4 caused substantial additional damage to Plaintiff in many separate and independent
5 ways. By way of example only, and without limitation, Defendants' unauthorized
6 uses of the Color Studies has diminished the value of such property for other uses,
7 including first-use premiums and exclusive uses; and by using, and advertising and
8 promoting its use of, Plaintiff's property without any indication that such uses are
9 licensed or authorized by Plaintiff, Defendants denigrate and disparage Plaintiff and
10 her artwork and photography by conveying to its customers and the general public
11 that Plaintiff's property is without value, and/or is of insignificant or insubstantial
12 value, to Plaintiff's determinant and injury.

13 39. Upon information and belief, Defendants' use of the Color Studies drew
14 attention to, and promoted the sales of, its other products. Plaintiff is informed and
15 believes, and on that basis alleges, that Defendants knowingly and intentionally used
16 the Color Studies as a "door opener" to solicit customers to purchase goods from
17 Defendants' website.

18 40. Upon information and belief, Defendants' infringing and unlawful use
19 of the Color Studies has at least partially contributed to, are reasonably related to,
20 and/or bear a legally significant relationship to Defendants' sales of goods and
21 Defendants' profits therefrom.

22 41. Furthermore, each and every time an Infringing Item is posted or
23 reposted on the internet or social media—whether on Poshmark, eBay, Pinterest,
24 Instagram or otherwise—copyright infringement occurs, for which Defendants are
25 liable, given the above.

26 **F. Members of the Public Show Support for Plaintiff on Social Media**

27 42. On or about July 18, 2022, Plaintiff published on her Instagram account
28 a seven-image post featuring side by side photographs of the Color Studies and the

1 Infringing Items calling attention to the infringement and sharing her opinions as well
2 as the story behind the Color Studies.

3 43. As of the date of this Complaint, Plaintiff's post has garnered more than
4 2,000 likes, 300 comments and 500 shares, largely condemning ROXY and Rowley's
5 underhanded tactics. Indeed, following Plaintiff's post, many of Plaintiff's followers
6 took to the @ROXY and @CynthiaRowley Instagram accounts to express their
7 uproar only to notice that individual or entity in charge of the @CynthiaRowley
8 Instagram account had been deleting comments left by Plaintiff's followers, as well
9 as 'untagging' the company's Instagram account from Plaintiff's post and other
10 individual's reposts of the Color Studies and Infringing Items.

11 44. In or about July 2022, other Instagram accounts with which Plaintiff has
12 no affiliation, influence, or partnership began to cover the incident, such as a famed
13 singer and songwriter with followers in excess of 14 million and an Emmy Award
14 nominated actress with more than 200,000 followers. The Infringing Items were
15 included in each subsequent post and/or repost covering the incident.

16 **G. Plaintiff Unsuccessfully Attempts to Resolve the Issue with**
17 **Defendants**

18 45. On or about July 21, 2022, Plaintiff, by and through counsel, sent written
19 correspondence to Defendants requesting that Defendants cease and desist from the
20 production, marketing and sale of the Infringing Items.

21 46. On or about July 26, 2022, counsel for Boardriders responded, in writing,
22 to not only to deny any infringement on behalf of Boardriders, but to threaten to sue
23 Plaintiff for defamation over Plaintiff's opinions that were shared on social media.

24 47. Following this initial confrontation, Boardriders changed course and, as
25 a purported goodwill gesture, represented to Plaintiff that the Infringing Items were
26 no longer being sold while this matter was reviewed internally.

27 48. However, despite Boardriders' assurances to the contrary, the Infringing
28 Items: (i) are still available for purchase in Boardriders brick-and-mortar locations as

1 far as France; (ii) are still available for purchase on multiple websites, including but
2 not limited to www.roxy.com; (iii) are still available for viewing and/or purchase on
3 additional retailers' websites such as www.dickssportinggoods.com and
4 www.REI.com; and/or (iv) can also still be viewed on e-mail and online newsletter
5 search engines and other websites, including but not limited to www.forbes.com,
6 www.wwd.com, www.cynthiarowley.com, and www.roxy.com, among others.

7 49. Then, on September 24, 2022, Plaintiff received an unsolicited direct
8 message on Instagram from Ms. Rowley’s husband. In his message, Ms. Rowley’s
9 husband confirmed Rowley’s prior acts of infringement against renowned artists such
10 as Jack Pierson, Gary Hume and Dough Aitken and communicated to Plaintiff that he
11 “had nothing to do with this Roxy collab” and didn’t want Plaintiff to “think [he] had
12 anything to do with this situation”.

13 50. Indeed, following her July 2022 post on Instagram, many other artists
14 and creatives have contacted Plaintiff to share similar experiences they have had with
15 Rowley in the past.

16 51. Despite Plaintiff's efforts, as of the date of this Complaint, Rowley has
17 not responded to Plaintiff's letter or her repeated attempts to engage in a meaningful
18 discussion regarding the Infringing Items.

FIRST CAUSE OF ACTION

(Copyright Infringement - 17 U.S.C. §§ 102 and 106, *et seq.*)

(Direct, Contributory, Vicarious)

22 52. Plaintiff incorporates in this cause of action each and every allegation set
23 forth above.

24 53. Plaintiff is the sole owner of the copyright in six original works that are
25 fixed in a tangible media of expression—the Color Studies.

26 54. Upon information and belief, Defendants have obtained, distributed, and
27 publicly displayed the Color Studies without Plaintiff's consent.

1 55. Defendants' acts violate Plaintiff's exclusive rights under the Copyright
2 Act—17 U.S.C. §§ 106 and 501—including, but not limited to, Plaintiff's exclusive
3 rights to produce, reproduce, and distribute copies of her work, to create derivative
4 works, and to publicly display her work.

5 56. Alternatively, with actual or constructive knowledge of the infringing
6 activity, Defendants have induced, caused and/or materially contributed to the
7 infringing conduct of others; and/or have failed to exercise their respective rights and
8 abilities to control the conduct of those responsible for infringement, while deriving
9 a financial benefit from the infringement. Accordingly, Defendants have directly,
10 contributorily, and/or vicariously infringed on the Works.

11 57. Each infringement of Plaintiff's rights in the Color Studies constitutes a
12 separate and distinct act of infringement.

13 58. Defendants' conduct was intentional and willful and undertaken with a
14 conscious disregard of Plaintiff's rights and, therefore, Plaintiff respectfully requests
15 actual damages as well as compensatory damages, including but not limited to
16 Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. § 504, and
17 to punitive damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Contributory Copyright Infringement)

20 59. Plaintiff incorporates in this cause of action each and every allegation set
21 forth above.

22 60. As a direct and proximate result of Defendants' infringing actions,
23 numerous additional individuals and entities directly infringed the Color Studies.

24 61. Defendant induced, caused, and materially contributed to the infringing
25 acts of encouraging, inducing, allowing and assisting others to reproduce and
26 distribute the Color Studies.

62. Defendants were aware, or should have had knowledge, of the infringing acts relating to the Color Studies.

1 63. The acts and conduct of Defendants, as alleged above, constitute
2 contributory copyright infringement, and, therefore, Plaintiff respectfully requests
3 damages related thereto, in an amount to be proven at trial, including but not limited
4 to attorney's fees.

THIRD CAUSE OF ACTION

(Vicarious Copyright Infringement)

7 64. Plaintiff incorporates in this cause of action each and every allegation set
8 forth above.

9 65. As a direct and proximate result of Defendants' infringing actions,
10 numerous additional individuals and entities directly infringed the Color Studies.

11 66. Defendants had the right and ability to control the infringing acts of the
12 individuals who directly infringed upon the Color Studies.

13 67. Defendants obtained a direct financial benefit from the infringing
14 activities of the individuals and entities who directly infringed the Color Studies.

15 68. The acts and conducts of Defendants, as alleged above, constitute
16 vicarious copyright infringement and, therefore, Plaintiff respectfully requests
17 damages related thereto, in an amount to be proven at trial, including but not limited
18 to attorney's fees.

FOURTH CAUSE OF ACTION
(Violation of *California Civil Code* § 980)

21 69. Plaintiff incorporates in this cause of action each and every allegation set
22 forth above.

23 70. Plaintiff possesses exclusive ownership interests pursuant to *California*
24 *Civil Code* § 980, and under the common law, in and to the Color Studies and Plaintiff
25 is informed and believes, and on that basis avers, that Defendants have infringed upon
26 Plaintiff's rights therein.

27 71. By way of illustration only, Defendants have, without Plaintiff's
28 authorization, consent and/or permission, obtained and distributed the Color Studies.

1 72. As a direct and proximate result of Defendants' conduct in violation of
2 Plaintiff's exclusive ownership interests in and to the Color Studies owned pursuant
3 to state law, Defendants have received proceeds and Plaintiff has been damaged in an
4 amount to be proven at trial.

5 73. Defendants have engaged in oppression, fraud and/or malice and, by
6 reason thereof, Plaintiff, in addition to her actual damages, respectfully requests
7 exemplary and punitive damages against Defendants in an amount to be proven at
8 trial.

FIFTH CAUSE OF ACTION

(Violation of California Business and Professions Code §17200)

11 74. Plaintiff incorporates in this cause of action each and every allegation set
12 forth above.

13 75. The foregoing acts and conduct of Defendants constitute
14 misappropriation, conversion, and invasion of Plaintiff's property rights in and to the
15 Color Studies that Plaintiff owns pursuant to state law and which Defendants have
16 infringed, to be identified in discovery.

17 76. The foregoing acts and conduct of Defendants constitute unfair
18 competition under California Business and Professions Code § 17200 and under the
19 common law.

20 77. As a direct and proximate result of Defendants' conduct, Plaintiff is
21 entitled to recover all proceeds and other compensation received or to be received by
22 Defendants arising from their infringements of Plaintiff's Color Studies owned
23 pursuant to state law. Plaintiff requests that the Court order Defendants to render an
24 accounting to ascertain the amount of such profits and compensation. As a direct and
25 proximate result of Defendants' unfair competition, Plaintiff has been damaged and
26 Defendants have been unjustly enriched, in an amount that shall be proven at trial for
27 which damages, restitution, and/or disgorgement is appropriate.

78. Defendants have engaged in oppression, fraud and/or malice and Plaintiff, in addition to her actual damages is, by reason thereof, respectfully requests exemplary and punitive damages against Defendant.

79. If necessary, Plaintiff hereby reserves the right to amend this Complaint to add additional claims under state law, or, alternatively, will provide such information pursuant to Fed. R. Civ. P. 26 and/or in discovery.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For compensatory damages according to proof;
- b. For punitive and exemplary damages in such amount as may be awarded at trial;
- c. For special damages according to proof;
- d. For general damages according to proof;
- e. For lost profits according to proof;
- f. For past and future lost earnings according to proof;
- g. For pre-judgment and post-judgment interest thereon to accrue at the maximum allowable legal rate per annum;
- h. For costs of suit incurred herein, including reasonable attorney's fees; and
- i. For such other and further relief as the Court may deem just and proper.

/s/ Saussee Moghoyan
Saussee Moghoyan (CA Bar No. 289764)

Attorney for Plaintiff